

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of) File No. EB-09-SE-102
)
Qomo HiteVision, LLC) Acct. No. 201032100036
)
) FRN No. 0019084136
)

ORDER

Adopted: July 19, 2010

Released: July 20, 2010

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Qomo HiteVision, LLC (“Qomo”). The Consent Decree terminates an investigation by the Bureau against Qomo for possible violations of Section 302(b) of the Communications Act of 1934,¹ as amended (“Act”), and Sections 2.803(a) and 15.201(b) of the Commission’s Rules (“Rules”)² regarding the marketing of unauthorized radio frequency response systems.

2. The Bureau and Qomo have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Qomo possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended,³ and sections 0.111 and 0.311 of the Commission’s Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803(a), 15.201(b).

³ 47 U.S.C. § 154(i).

⁴ 47 C.F.R. §§ 0.111, 0.311.

7. **IT IS FURTHER ORDERED** that all third-party complaints against Qomo before the Bureau related to the above-captioned-investigation as of the date of this Consent Decree **ARE DISMISSED**.

8. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Ms. Jenny Zheng, COO, Qomo HiteVision, LLC, 28265 Beck Road, Suite C1, Wixom, MI 48393.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-09-SE-102
)	
Qomo HiteVision, LLC)	Acct. No. 2010321000xx
)	
)	FRN No. 0019084136

CONSENT DECREE

The Enforcement Bureau (“Bureau”) and Qomo HiteVision, LLC (“Qomo”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether Qomo violated Section 302(b) of the Communications Act of 1934,¹ as amended (“Act”), and Sections 2.803(a) and 15.201(b) of the Commission’s Rules (“Rules”)² regarding the marketing of unauthorized radio frequency response systems.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. §151 *et seq.*
 - (b) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) “Compliance Plan” means the program described in this Consent Decree at paragraph 8.
 - (f) “Complaints” means third-party complaints that may have been received by, or are in the possession of, the Commission or Bureau alleging violations of Section 302(b) of the Act and Sections 2.803(a) and 15.201(b) of the Rules.
 - (g) “Effective Date” means the date on which the Bureau releases the Adopting Order.
 - (h) “Investigation” means the investigation commenced by the Bureau’s August 18, 2009 letter of inquiry regarding whether Qomo violated Section 302(b) of the Act and

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803(a), 15.201(b).

Sections 2.803(a) and 15.201(b) of the Rules by marketing unauthorized radio frequency devices within the United States.

- (i) “Parties” means Qomo and the Commission.
- (j) “Qomo” means Qomo HiteVision, LLC, its predecessors-in-interest and corporate successors-in-interest.
- (k) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Pursuant to Section 302(b) of the Act³ and Section 2.803(a) of the Rules,⁴ a radio frequency device may not be marketed⁵ within the United States unless the device complies with the applicable technical and administrative provisions of the Rules. Section 15.201 of the Rules⁶ requires intentional radiators to be approved prior to marketing through the equipment certification⁷ procedures described in Sections 2.1031 – 2.1060 of the Rules.⁸ Radio frequency devices must also comply with all applicable identification and labeling requirements prior to marketing.⁹

3. On August 18, 2009, the Bureau issued a Letter of Inquiry to Qomo.¹⁰ The LOI directed Qomo to respond to a series of questions regarding the advertising, sale, importation, and labeling of certain of its radio frequency response systems. Qomo responded to the LOI on September 18, 2009.¹¹

³ 47 U.S.C. § 302a(b).

⁴ 47 C.F.R. § 2.803(a).

⁵ Section 2.803(e)(4) of the Rules defines “marketing” as the “sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease.” 47 C.F.R. § 2.803(e)(4).

⁶ 47 C.F.R. § 15.201.

⁷ A certification is an equipment authorization issued by the Commission, based on representations and test data submitted by the applicant. *See* 47 C.F.R. § 2.907(a).

⁸ 47 C.F.R. §§ 2.1031 – 2.1060.

⁹ *See* 47 C.F.R. § 2.925.

¹⁰ *See* Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Ms. Jenny Zheng, COO, Qomo Hite Vision, LLC. (August 18, 2009).

¹¹ *See* Letter from Ms. Jenny Zheng, COO, Qomo Hite Vision, LLC., to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau (September 18, 2009). On September 26, 2009, Qomo’s Model QRF300 radio frequency response system was certificated in accordance with the Commission’s equipment authorization procedures. *See* FCC IDs XQGQRF300-RES and XQGQRF300-RET (granted: September 25, 2009 and September 26, 2009, respectively; grantee: Qomo HiteVision LLC., Wixom, Michigan). On September 27, 2009, Qomo’s Model QRF600 radio frequency response system was certificated in accordance with the Commission’s equipment authorization procedures. *See* FCC IDs XQGQRF600-RE and XQGQRF600-TR (granted: September 27, 2009; grantee: Qomo HiteVision LLC., Wixom, Michigan).

On December 15, 2009, the Division issued a follow-up LOI to Qomo.¹² Qomo responded to the follow-up LOI on January 8, 2010.¹³

III. TERMS OF AGREEMENT

4. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

5. **Jurisdiction.** Qomo agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the investigation and dismiss the Complaint. In consideration for the termination of the investigation and dismissal of the Complaint, Qomo agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Qomo concerning the matters that were the subject of the investigation. The Bureau also agrees that it will not use the facts developed in this investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Qomo with respect to Qomo's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, Qomo agrees to create and maintain a Compliance Plan related to future compliance with the Act, the Commission's Rules and the Commission's Orders. The Compliance Plan will include, at a minimum, the following components:

- (a) **Compliance Officer.** Qomo will designate a Compliance Officer who will be responsible for administering the company's Compliance Plan.
- (b) **Training.** Within 60 days of the Effective Date, Qomo will train and provide materials concerning the Commission's equipment authorization rules to all of its employees responsible for the development, marketing and sourcing of radio frequency devices by Qomo in the United States, including employees located at

¹² See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Ms. Jenny Zheng, COO, Qomo Hite Vision, LLC (December 15, 2009).

¹³ See Letter from Ms. Jenny Zheng, COO, Qomo Hite Vision, LLC., to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau (January 8, 2010).

its Fujian, China facility. Such training will be provided to new employees within 30 days of the start of their employment.

- (c) **Compliance Reports.** Qomo will file Compliance Reports with the Commission ninety (90) days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date. Each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Qomo, stating that the Compliance Officer has personal knowledge that Qomo (i) has established operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree and with section 20.19 of the Rules, together with an accompanying statement explaining the basis for the Compliance Officer's certification; (ii) has been utilizing those procedures since the previous Compliance Report was submitted; and (iii) is not aware of any instances of non-compliance. The certification must comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein. If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Qomo, shall provide the Commission with a detailed explanation of: (i) any instances of non-compliance with this Consent Decree and the Rules, and (ii) the steps that Qomo has taken or will take to remedy each instance of non-compliance and ensure future compliance, and the schedule on which proposed remedial actions will be taken. All compliance reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Jennifer Burton at Jennifer.Burton@fcc.gov and to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov.
- (d) **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire 24 months after the Effective Date.

9. **Voluntary Contribution.** Qomo agrees that it will make a voluntary contribution to the United States Treasury in the amount of \$12,000. The payment shall be made within thirty (30) calendar days after the Effective Date. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 02130004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Qomo will also send electronic notification to Jennifer Burton, Esq. at Jennifer.Burton@fcc.gov and JoAnn Lucanik at JoAnn.Lucanik@fcc.gov on the date said payment is made.

10. **Waivers.** Qomo waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order adopting the Consent Decree without change, addition, modification or deletion. Qomo shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting

Order, neither Qomo nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Qomo shall waive any statutory right to a trial *de novo*. Qomo hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

11. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

12. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Qomo does not expressly consent) that provision will be superseded by such Commission Rule or Order.

13. **Successors and Assigns.** Qomo agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

14. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission's Rules and Orders.

15. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

16. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

17. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

18. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

Date

Jenny Zheng, COO
Qomo HiteVision, LLC

Date